IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5779 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DAUOOD MIYAJIBHAI SANESHRA

Versus

DEPUTY COLLECTOR

Appearance:

MS KUSUM M SHAH for Petitioners

MR PR JOSHI AGP for Respondent No. 1, 2, 3, 4

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 22/09/2000

ORAL JUDGEMENT

The petitioners are claiming the ownership of the lands bearing Survey No. 69/1, admeasuring 2 Acre-13 Gunthas; Survey No.70/2, admeasuring 1 Acre-09 Gunthas; Survey No. 71/1, admeasuring 1 Acre-16 Gunthas; and Survey No. 71/2, admeasuring 2 Acre-29 Gunthas, situated

at village Godhani, Taluka-Danta, District-Banaskantha through their ancestors Muman Miyajibhai Jethrabhai, Muman Rajebhai Jethrabhai and Muman Nasirbhai Jethrabhai - the purchasers from the original Vendor Bhurekhan Mahmadkhan. The said lands were sold by Bhurekhan to the above referred ancestors of the petitioners herein on 3rd February, 1972, by a registered sale-deed. A mutation entry to that effect was made in the Revenue Records on 20th March, 1972, and the said entry was also certified on 30th April, 1972. A notice was issued by the Deputy Collector on 29th June, 1984, stating that the said lands were the new tenure lands and the transfer was made in contravention of the terms of the grant made to the Vendor, and calling upon the purchasers to show cause why the said transfer should not be set aside. It appears that by order dated 18th August, 1984, made by the Deputy Collector, the transfer of the lands made on 3rd February, 1972, being in contravention of the terms of the grant, was quashed and set aside. Feeling aggrieved, the purchasers, through whom the petitioners claim the ownership, preferred Land Appeal No. 127/84 before the Collector, Banaskantha, which was dismissed on 5th November, 1984. The said order was confirmed by the Government on 8th November, 1985, in Revision. Feeling aggrieved, the petitioners have preferred the present petition.

It appears that the purchases were the owners of the lands contiguous to the lands in question and had purchased the lands in question for consideration from the Vendor Bhurekhan Mahmadkhan. Since then, the purchasers had spent a considerable amount for improvement of the lands and had also spent a sum of Rs.40,000/- for digging a well on the said lands. The plea of the purchasers that the action was initiated 12 years after the date of transfer, has been rejected by the authorities below on the ground that no period of limitation has been prescribed for such an action. I am of the view that the authorities below have grossly erred in brushing aside the plea of unduly long delay raised by the purchasers. Though there may not be statutory period of limitation in initiating such action, such action has to be initiated within reasonable time. The period of 12 years can, by no stretch of imagination, be said to be a reasonable time. Besides, no explanation has comeforth why the action was not initiated at the earliest, or why there was delay of 12 years. The authorities below have also not considered the plea of the purchasers with regard to the expenditure incurred by them on the lands in question.

In view of the above discussion, the petition is allowed. The impugned order dated 18th August, 1984, made by the Deputy Collector, and the order dated 5th November, 1984, made by the District Collector, in Revenue Appeal No. 127/84, and the order dated 8th November, 1985, made by the State Government (Annexures-B & C to this petition) are quashed and set aside. Rule is made absolute. The parties shall bear their own costs.

(MS R.M.DOSHIT J)

JOSHI